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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 140429387-4971-02]

RIN 0648-XD276

Atlantic Highly Migratory Species; 2015 Atlantic Shark Commercial Fishing Seasons

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; fishing season notification.

SUMMARY: This final rule establishes opening dates and adjusts quotas for the 2015 fishing seasons for the Atlantic commercial shark fisheries. The quota adjustments are based on over- and/or underharvests experienced during 2014 and previous fishing seasons. In addition, NMFS establishes season opening dates based on adaptive management measures to provide, to the extent practicable, fishing opportunities for commercial shark fishermen in all regions and areas. These actions could affect fishing opportunities for commercial shark fishermen in the northwestern Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea.

DATES: This rule is effective on January 1, 2015. The 2015 Atlantic commercial shark fishing season opening dates and quotas are provided in Table 1 under SUPPLEMENTARY INFORMATION.

ADDRESSES: Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Guý DuBeck or Karyl Brewster-Geisz at 301-427-8503.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic commercial shark fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. For the Atlantic commercial shark fisheries, the 2006 Consolidated HMS FMP and its amendments established, among other things, commercial quotas for species and management groups, accounting measures for under- and overharvests for the shark fisheries, and adaptive management measures, such as flexible opening dates for the fishing seasons and inseason adjustments to shark trip limits, which provide management flexibility in furtherance of equitable fishing opportunities, to the extent practicable, for commercial shark fishermen in all regions and areas.

On September 11, 2014 (79 FR 54252), NMFS published a rule proposing the 2015 opening dates for the Atlantic commercial shark fisheries and quotas, based on shark landings information as of August 15, 2014. The September 2014 proposed rule contains details regarding the proposal and how the quotas were calculated that are not repeated here. The comment period on the proposed rule ended on October 14, 2014.

During the comment period, NMFS received more than 50 written and oral comments on the proposed rule. Those comments, along with the Agency's responses, are summarized below. As further detailed in the Response to Comments section, after considering all the comments,

NMFS is opening the fishing seasons for all shark management groups except the aggregated LCS and hammerhead shark management groups in the Atlantic region on January 1, 2015, as proposed in the September 11, 2014, proposed rule. The aggregated LCS and hammerhead shark management groups in the Atlantic region will open on July 1, 2015, which is a change from the proposed rule. Also, some of the quotas have changed since the proposed rule, based on updated landings information as of October 15, 2014.

This final rule serves as notification of the 2015 opening dates of the Atlantic commercial shark fisheries and 2015 quotas, based on shark landings updated as of October 15, 2014, pursuant to the “Opening Fishing Season” criteria at § 635.27(b)(1)(i) through (b)(1)(x). This action does not change the annual base commercial quotas established under Amendments 2, 3, and 5a to the 2006 Consolidated HMS FMP for any shark management group. Any such changes would be performed through a separate action. Rather, this action adjusts the annual base commercial quotas for 2015 based on over- and/or underharvests that occurred in 2014 and previous fishing seasons, consistent with existing regulations.

Response to Comments

NMFS received comments on the proposed rule from more than 50 fishermen, dealers, and other interested parties. All written comments can be found at <http://www.regulations.gov/> by searching for RIN 0648-XC276.

A. LCS Management Group Comments

Comment 1: NMFS received more than 30 comments regarding the proposed opening date for the aggregated LCS and hammerhead management groups in the Atlantic region. Some fishermen from the southern portion of the Atlantic region and other constituents supported the

proposed opening date of June 1. The comments from some of the fishermen in this area noted they preferred the opportunity to fish for sharks in October through December because they participate in other, non-shark fisheries at the beginning of the year and prefer to save the shark quota for later in the year, when there are no other fisheries open in Florida. Other constituents in the southern portion of the Atlantic region said they preferred a later opening date to reduce the fishing pressure on sharks. Other fishermen from the southern portion of the Atlantic region requested a January 1 opening date due to shark depredation and discard issues these fishermen encounter while targeting other, non-shark species. These commenters feel that the delayed opening in 2014 negatively affected their fishing effort for non-shark species and increased shark discards because the delayed opening date prevented sharks from being landed. Both the Atlantic States Marine Fisheries Commission (ASMFC) and North Carolina Division of Marine Fisheries (NCDMR) requested a July 1 opening date and expressed concerns that the proposed June 1 opening date would not provide equitable fishing opportunities for fishermen located in the northern portion of the Atlantic region. On October 30, 2014, the ASMFC Shark Board voted on and approved opening the Atlantic aggregated LCS state-water fishery on July 1, 2015. The Board also voted on and approved opening the state-water shark fishery for the other management groups on the date announced in this final rule.

Response: NMFS evaluates several “Opening Fishing Season” criteria (§ 635.27(b)(3)) when choosing an opening date. These criteria include: 1) the available annual quotas for the current fishing season for the different species/management groups based on any over- and/or underharvests experienced during the previous commercial shark fishing seasons; 2) estimated season length based on available quota(s) and average weekly catch rates of different species

and/or management group from the previous years; 3) length of the season for the different species and/or management group in the previous years and whether fishermen were able to participate in the fishery in those years; 4) variations in seasonal distribution, abundance, or migratory patterns of the different species/management groups based on scientific and fishery information; 5) effects of catch rates in one part of a region precluding vessels in another part of that region from having a reasonable opportunity to harvest a portion of the different species and/or management quotas; 6) effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments; and/or 7) effects of a delayed opening with regard to fishing opportunities in other fisheries.

After evaluating the opening fishing season criteria and reviewing the public comments, NMFS has determined that changing the opening date from June 1 to July 1 would better promote equitable fishing opportunities in the Atlantic region, while still allowing for the full quota to be harvested. This date should allow fishermen in the northern portion of the Atlantic region the opportunity to fish starting in July, while still providing fishermen in the southern portion of the Atlantic region fishing opportunities later in the year, which might not be available with a June 1 opening date. After reviewing the landings information received as of October 15, 2014, and considering the first, second, fourth, fifth, and sixth criteria listed above, NMFS projected that under current harvest rates, the 2014 fishing season for Atlantic aggregated LCS and hammerhead sharks may need to be closed before the end of the year. Because the 2014 fishing season opened June 1 with similar quotas to those being adopted for the 2015 fishing season, NMFS believes this current season is an appropriate year to use as a proxy for 2015. Based on fishing rates from 2014, a July 1 opening date in 2015 would provide potential fishing

opportunities later in the year, without significantly reducing potential fishing opportunities earlier in the year.

Regarding the comments from some fishermen from the southern portion of the Atlantic region who supported the proposed June 1 opening for the Atlantic aggregated LCS and hammerhead shark fisheries to ensure the potential fishing opportunities later in the year (October through December), changing the opening date to July 1 is consistent with the intent noted by these fishermen, and is based in part on these comments. As discussed above, opening the fishing season on July 1, 2015, rather than June 1, 2015, would better ensure fishing opportunities later in the year.

Regarding the comments from other constituents who supported the proposed opening date of June 1 to reduce fishing pressure on sharks, a later opening date would reduce fishing pressure on sharks during part of the year; however, that fishing pressure would still occur during other parts of the year. NMFS is unaware of any science specific to the shark fishery as a whole that indicates fishing pressure during one part of the year is more harmful than fishing pressure during another part of the year. Furthermore, as noted below, while fishermen may not be fishing for sharks when the season is closed, fishing pressure on sharks still occurs, as sharks are still caught and discarded during closed seasons. These factors are taken into account in establishing rebuilding plans for the stock and commercial fishing quotas. NMFS establishes commercial fishing quotas based on the best available science, in order to rebuild overfished fisheries, prevent overfishing, and achieve optimum yield. Through the stock assessments for these species, the current quotas and fishing pressure have been determined to prevent overfishing and rebuild overfished stocks.

Regarding the comments from fishermen from the southern portion of the Atlantic region who requested an opening date of January 1 for the Atlantic aggregated LCS and hammerhead shark fisheries due to the depredation of non-shark target catch by sharks, NMFS agrees that fishermen who catch sharks incidental to fishing for other, non-shark species would need to discard sharks at the beginning of the year if the shark fishing season is not yet open. However, opening the Atlantic aggregated LCS and hammerhead shark fisheries on January 1 would not provide equitable fishing opportunities throughout the region. Fishermen in the southern portion of the Atlantic region could harvest a large amount of the quota before the sharks migrate into the northern portion of the Atlantic region. Additionally, regardless of when the fishing season opens, fishermen who catch sharks when the fishing season is closed would need to discard sharks that are caught incidental to other fishing activities. Thus, opening early in the year likely would mean that fishermen who fish later in the year (when the shark fishery would likely be closed) would need to discard any sharks caught. These potential discards from fishing for other species when the shark season is closed were accounted for when establishing the base quotas and are considered during stock assessments.

Regarding the requests by ASMFC and NCDMR to delay the opening of the aggregated LCS and hammerhead shark management groups in the Atlantic region until July 1 to allow equitable fishing opportunities given the migration of sharks along the coast throughout the year, as discussed above, NMFS has determined that opening the fisheries later in the year could provide more equitable fishing opportunities across the entire Atlantic region, without negative ecological impacts on shark stocks. The July 1 opening date voted on and approved by the ASMFC Shark Board for the Atlantic aggregated LCS state-water fishery is consistent with the

opening date NMFS is establishing in this final rule.

Comment 2: Regarding the proposed opening date for the blacktip shark, aggregated LCS, and hammerhead shark management groups in the Gulf of Mexico region, all commenters supported the proposed opening date of January 1. NMFS also received mixed comments regarding the carry forward of the 2014 quota underharvest to the 2015 fishing season. Some commenters supported the carry forward of the underharvested blacktip shark quota, since the management group is not overfished and no overfishing is occurring, while other commenters requested that NMFS not increase the blacktip shark fishing quota as a result of the underharvest due to concerns about overfishing, illegal fishing, and discards of shark species.

Response: Taking into consideration the “Opening Fishing Season” criteria (§ 635.27(b)(3)) and general support of the proposed opening date, NMFS has determined that keeping the proposed opening date of January 1 for the blacktip shark, aggregated LCS, and hammerhead shark management groups in the Gulf of Mexico region promotes equitable fishing opportunities throughout this region. In reaching this determination, NMFS considered, in particular, the length of the season for the different species and/or management groups in 2013 and 2014 and whether fishermen were able to participate in the fishery in those years (§ 635.27(b)(3)(iii)).

Regarding the comments relating to carrying forward the 2014 quota underharvest to the 2015 fishing season, current regulations state that shark stocks that are not overfished and have no overfishing occurring may have any underharvest carried forward in the following year, up to 50 percent of the base quota (§ 635.27(b)(2)). The Gulf of Mexico blacktip shark management group is not overfished and not experiencing overfishing (77 FR 70552; November 26, 2012).

As such, under the current regulations, available underharvest (up to 50 percent of the base quota) from the 2014 fishing season can be applied to the 2015 quota, and NMFS will do so.

In the final rule for Amendment 5a to the 2006 Consolidated HMS FMP (78 FR 40318, July 3, 2013), NMFS implemented a total allowable catch (TAC) for blacktip sharks in the Gulf of Mexico region and also established a commercial quota for this species, based on current levels of mortality. When establishing the TAC, all sources of mortality were accounted for as described in Amendment 5a to the 2006 Consolidated HMS FMP. Given this, even carrying forward the underharvest, the TAC is not likely to be exceeded because the resulting mortality and any discards were already taken into account. In addition, as described in Amendment 5a to the 2006 Consolidated HMS FMP, the Gulf of Mexico blacktip shark stock assessment noted that current removal rates are sustainable, and subsequent projections, which were completed outside the SEDAR process, indicate that current removals are unlikely to lead to an overfished fish stock by 2040. The projections also indicate that higher levels of removal, like carrying forward the underharvest, are unlikely to result in an overfished stock.

Comment 3: NMFS received a comment from the ASMFC in opposition to changing the retention limits throughout the season. Specifically, ASMFC noted that the current LCS retention limit has eliminated the LCS target shark fishery and that fishermen use the LCS retention limit to supplement total trip catch when fishing for other species (e.g., tilefish, Spanish mackerel, swordfish, etc.). ASMFC is concerned that any adjustment to the trip limit could reduce these fishermen's economic success.

Response: NMFS did not discuss retention limits for the aggregated LCS and hammerhead shark management groups in the proposed rule for the 2015 Atlantic shark

commercial fishing season. NMFS did indicate that the Agency could use the adaptive management measures that were finalized in the 2011 shark season rule (75 FR 76302; December 8, 2010), which includes adjusting, via inseason actions, the retention limit for aggregated LCS and hammerhead sharks. These adaptive management measures were finalized in 2011 to provide fishermen more equitable access to the relevant shark resource throughout their applicable region by slowing a fishery down, as needed, if the quota is being harvested too quickly. For example, if fishermen in one part of a region were catching sharks quickly and might fully harvest the available quota before the sharks were likely to migrate to other parts of the region, NMFS might reduce the trip limit for a short period of time in order to ensure all fishermen throughout the region had an opportunity to harvest sharks. Before making inseason adjustments, NMFS would consider the criteria listed at § 635.24(a)(8). To date, NMFS has not used these adaptive management measures, but may in the future, depending on catch rates and available quota.

Comment 4: NMFS received comments on the proposed quotas for the hammerhead shark management groups. Commenters requested NMFS to lower the hammerhead shark management group quotas because the quotas could have been underharvested due to the small population and/or low demand for harvesting. Commenters suggest that NMFS be conservative with the proposed quota, determine the reason for the underharvest, and account for illegal or undocumented harvest of hammerhead sharks.

Response: NMFS is setting the base quota as the 2015 quota for the hammerhead shark management groups, and adjustments to the base quota for anything other than for over- and underharvest are beyond the scope of this rulemaking. Based on the results of a 2009 stock

assessment, NMFS determined that scalloped hammerhead sharks were overfished and experiencing overfishing (76 FR 23794, April 28, 2011). In Amendment 5a to the 2006 Consolidated HMS FMP (78 FR 40318, July 3, 2013), NMFS implemented a TAC for all of the hammerhead shark stocks (scalloped, great, and smooth) that would allow rebuilding of the scalloped hammerhead shark stock within 10 years. In addition, NMFS implemented quota linkages for the aggregated LCS and hammerhead shark management groups in Amendment 5a to the 2006 Consolidated HMS FMP. Under these linkages, if either management group reaches or is projected to reach its quota, NMFS would close both management groups to ensure discards do not occur. In 2013, which was the first year with a separate hammerhead shark quota, the hammerhead shark landings did not reach the quota due to the quota linkage with the aggregated LCS management group. Once landings of the aggregated LCS management group reached 80 percent, NMFS closed both the aggregated LCS and hammerhead shark management groups. Thus, NMFS believes the quota linkage has been the reason the hammerhead shark quota is not fully harvested and does not believe that the lack of hammerhead shark landings raises additional concerns about the status of the stock.

Regarding the comment to account for illegal or undocumented harvest of hammerhead sharks, NMFS is aware of illegal or undocumented harvest of shark species, including many SCS and blacktip sharks, along with a few hammerhead sharks, in the Gulf of Mexico. NOAA and the U.S. Coast Guard are actively working to address illegal fishing vessel incursions into U.S. waters, and, as appropriate, NMFS includes estimates of illegal catches from the border of Texas and Mexico in stock assessments to ensure all sources of mortality are considered. Illegal fishing is of high concern to NMFS, as this capture undermines management and rebuilding strategies,

makes stock assessments and capture data less reliable for science, and hurts U.S. fishermen who rely on these shark species, because when NMFS includes the illegal landings in the stock assessments, the additional mortality could lower the commercial quota for U.S. fishermen.

B. General Comments

Comment 5: NMFS received a comment that there has been an increase in the number of all species of sharks (especially juvenile sharks) in the coastal waters of South Carolina and the commenter requested NMFS to conduct research in the area.

Response: This comment is outside the scope of this rulemaking, which establishes commercial quotas for the 2015 shark season based on over- and underharvest in 2014 and previous fishing seasons and sets the opening dates for each management group. To the extent the commenter is requesting research on shark numbers and habitats, that research is regularly done, including off South Carolina, as part of the stock assessments of shark species. Management of the Atlantic shark fisheries is based on the best available science to rebuild overfished or maintain shark stocks and prevent overfishing. NMFS continues to study essential fish habitats (EFH) for HMS, including off South Carolina, to refine our understanding of important habitat areas for HMS. The Magnuson-Stevens Act defines EFH as habitat necessary for spawning, breeding, feeding, and growth to maturity. The Magnuson-Stevens Act requires the identification of EFH in FMPs, and towards that end, NMFS has funded two cooperative survey programs designed to further delineate shark nursery habitats in the Atlantic and Gulf of Mexico. In the Atlantic, the Cooperative Atlantic States Shark Pupping and Nursery (COASTSPAN) Survey is designed to assess the geographical and seasonal extent of shark nursery habitat, determine which shark species use these areas, and gauge the relative importance

of these coastal habitats in order to provide information that can then be used in EFH determinations. In South Carolina, COASTSPAN sampling took place in both nearshore and estuarine waters, including: Bulls Bay, Charleston Harbor, North Edisto, Port Royal Sound, St. Helena Sound, and Winyah Bay. Thirteen species of sharks were captured, the most abundant of which was Atlantic sharpnose. The findings of COASTSPAN continue to highlight the importance of South Carolina estuarine and nearshore waters as nursery habitat for many SCS and LCS, and indicate the extensive use of these waters as habitat for several adult SCS.

Comment 6: NMFS received comments to stop all shark fishing.

Response: This comment is outside the scope of this rulemaking, because the purpose of this rulemaking is to adjust quotas for the 2015 shark seasons based on over- and underharvests from the previous years and set opening dates for the 2015 shark seasons. Management of the Atlantic shark fisheries is based on the best available science to maintain or rebuild overfished shark stocks. The final rule does not reanalyze the overall management measures for sharks, which were analyzed in Amendments 2, 3, and 5a to the 2006 Consolidated HMS FMP. NMFS is considering further shark management measures, including those to rebuild shark stocks or prevent overfishing, in other upcoming rulemakings, such as Amendments 5b and 6 to the 2006 Consolidated HMS FMP.

Comment 7: NMFS received comments stating that there are still ongoing issues with the survival of Central and Southwest Atlantic Distinct Population Segment (DPS) scalloped hammerhead sharks due to the extremely high post-release mortality rate of the species. Commenters request that NMFS hold more catch and release and identification workshops to ensure the future of these sharks.

Response: This comment is outside the scope of this rulemaking, because the purpose of this rulemaking is to adjust quotas for the 2015 shark seasons based on over- and underharvests from the previous years and set opening dates for the 2015 shark seasons. Management of the Atlantic shark fisheries is based on the best available science to maintain or rebuild overfished shark stocks.

On July 3, 2014, NMFS issued the final determination to list the Central and Southwest Atlantic Distinct DPS of scalloped hammerhead shark as threatened species pursuant to the Endangered Species Act (ESA) (79 FR 38214). The Central and Southwest Atlantic DPS of scalloped hammerhead sharks occurs within the management area of Atlantic HMS commercial and recreational fisheries that are managed by NMFS's Office of Sustainable Fisheries, HMS Management Division. The HMS Management Division manages Atlantic HMS in U.S. Atlantic and Gulf of Mexico waters, including the U.S. Caribbean territories of Puerto Rico and the U.S. Virgin Islands. The HMS Management Division has reinitiated consultation with the NMFS Office of Protected Resources to consider if further actions regarding scalloped hammerhead sharks may be needed, including holding more catch and release and identification workshops in these areas.

Comment 8: NMFS received comments that some constituents strongly disagree with laws that allow federal commercial vessels to keep sharks that are illegal to land in state waters. Some constituents also recommended establishing commercial size limits for sharks.

Response: This comment is outside the scope of this rulemaking. The purpose of this rulemaking is to adjust quotas for the 2015 shark season based on over- and underharvests from the previous years and set opening dates for the 2015 shark season. Management of the Atlantic

shark fisheries is based on the best available science to maintain or rebuild overfished shark stocks. The final rule does not reanalyze the overall management measures for sharks, which were analyzed in Amendments 2, 3, and 5a to the 2006 Consolidated HMS FMP. NMFS is considering further shark management measures in other upcoming rulemakings, such as Amendments 5b and 6 to the 2006 Consolidated HMS FMP.

If fishermen are harvesting Atlantic sharks in federal waters, they are required to hold an HMS permit. As a condition of the federal permit, HMS permit holders must abide by all applicable federal regulations, regardless of where fishing occurs, including in state waters. However, when fishing in the waters of a state with more restrictive regulations, the more restrictive state regulations apply (§635.4(a)(10)) to those holders of Federal HMS permits.

Regarding the establishment of commercial size limits for sharks, NMFS has considered this several times and may consider it again in the future, depending on new data. In the 1999 Atlantic Tunas, Swordfish, and Sharks FMP, NMFS finalized a number of measures, including a commercial minimum size limit of 4.5 feet fork length for ridgeback sharks. This minimum size was never implemented, due to a court settlement, and in Amendment 1 to that 1999 FMP (68 FR 74746, December 24, 2003), NMFS determined that any conservation benefits gained by a commercial minimum size may be offset by increases in regulatory discards and associated post-release mortality, given that commercial fishermen may be unable to avoid mixed size aggregations of some shark species. Also, regulatory discards do not count towards the trip limit. Thus, fishermen could catch a full set of undersized sharks, which would be discarded, and then the fishermen would set more gear, potentially causing more discards. Additionally, finding an appropriate minimum size is difficult because shark species mature at different ages

and sizes and because commercial fishermen remove the heads of the sharks while dressing the carcass. Sharks are usually measured from the tip of their nose to either the fork of their tail (fork length) or the tip of their tail (total length). Thus, removing the head of the shark, while critical in maintaining the quality of meat necessary to sell the product, would cause enforcement and other difficulties if there was a commercial minimum size that depended on either fork length or total length. Despite these difficulties, most recently, NMFS considered a commercial minimum size for shortfin mako sharks under Amendment 3 to the 2006 Consolidated HMS FMP (75 FR 30484; June 1, 2010). Based on the fisheries logbook data, NMFS assumed that some shortfin mako sharks were dead at haulback; therefore, imposing a size limit could lead to an increase in dead discards. Thus, NMFS did not implement a commercial size for the species, but may consider this option again in the future depending on new data.

Comment 9: NMFS received comments that the Carolina hammerhead shark species needs more protection, as the population size is unknown and could easily be mistaken for the scalloped hammerhead sharks.

Response: This comment is outside the scope of this rulemaking. The purpose of this rulemaking is to adjust quotas for the 2015 shark seasons based on over- and underharvests from the previous years and set opening dates for the 2015 shark seasons. Management of the Atlantic shark fisheries is based on the best available science to maintain or rebuild overfished shark stocks. The final rule does not reanalyze the overall management measures for sharks, which were analyzed in Amendments 2, 3, and 5a to the 2006 Consolidated HMS FMP. The Carolina hammerhead shark species is not currently included in the hammerhead shark management groups, but NMFS may consider including it in the future.

Comment 10: NMFS received several comments from the NCDMF requesting the removal of the non-blacknose SCS and blacknose shark quota linkage, and expressing concerns that NMFS is not properly accounting for the different reported landing conditions between states in the Atlantic region.

Response: As described above, quota linkages are designed to prevent incidental mortality of one species from occurring in another shark fishery after the species' management group has closed. Also, in the case of the blacknose and non-blacknose SCS quota linkage, NMFS finalized the linkage as part of Amendment 3 to the 2006 Consolidated HMS FMP specifically because fishermen indicated, and NMFS agreed, that fishermen could target non-blacknose SCS without catching blacknose sharks. In Amendment 5a to the 2006 Consolidated HMS FMP, NMFS split the blacknose and non-blacknose quotas into two regions and again considered the necessity of the linkage. In each region, NMFS determined the linkage was necessary to rebuild blacknose sharks, and therefore the blacknose shark quota is linked to the non-blacknose SCS quota. If blacknose shark landings in one region trigger a quota closure, the non-blacknose SCS management group in that region would close as well. The quota linkage prevents blacknose shark mortality in the directed non-blacknose SCS fishery after the blacknose shark quota has been filled. Preventing this mortality is an important part of the rebuilding plan for blacknose sharks. In Amendment 6 to the 2006 Consolidated HMS FMP, NMFS will examine the quota linkage issue, along with considering other options that could address NCDMF's concerns.

Regarding the comment that NMFS is not properly accounting for the different reported landing conditions between states in the Atlantic region, the HMS Advisory Panel discussed this

issue at the September 2014 HMS Advisory Panel meeting in Silver Spring, MD. Atlantic Coastal Cooperative Statistics Program (ACCSP) dealer reports indicate differences in how fishermen land sharks. Dealers in some states report dressed sharks with carcass gutted, head on, and tail on, while others report dressed sharks with carcass gutted, head off, and tail off (i.e., shark cores). However, observer data and port agents indicate that sharks are landed with their heads off regardless of region. Additionally, dealers cannot indicate “heads on” in electronic dealer reporting forms. Because observer observations suggest that sharks are landed with “heads off,” and since all types of dressed shark carcasses are included in landings that are counted towards the commercial quotas, NMFS does not believe this concern affects the landings estimates used for this rule.

Changes From the Proposed Rule

NMFS made three changes to the proposed rule, as described below.

1. NMFS changed the final Gulf of Mexico blacktip shark (328.6 mt dw) quota based on updated landings through October 15, 2014. In the proposed rule, which was based on data available through August 15, 2014, the 2015 adjusted annual quota for Gulf of Mexico blacktip shark was proposed to be 330.0 mt dw (727,465 lb dw), based on an estimated 2014 underharvest of 73.4 mt dw (161,765 lb dw). Based on updated landings data through October 15, 2014, the Gulf of Mexico blacktip shark management group was underharvested by 72.0 mt dw. Therefore, the 2015 adjusted annual quota for Gulf of Mexico blacktip shark is 328.6 mt dw (724,302 lb dw) (256.6 mt dw annual base quota + 72.0 mt dw 2014 underharvest = 328.6 mt dw 2015 adjusted annual quota). Landings information beyond October 15, 2014, was not available while NMFS was writing this rule. This final rule used the most recent available information to

allow NMFS to properly analyze the fishery and open the fishery as proposed on January 1, 2015. Any landings between October 15 and December 31, 2014, will be accounted for in the 2016 shark fisheries quotas, as appropriate.

2. NMFS changed the final Gulf of Mexico aggregated LCS (156.5 mt dw) quota based on updated landings through October 15, 2014. In the proposed rule, the quota for the Gulf of Mexico aggregated LCS management group was proposed to be 156.1 mt dw (344,271 lb dw), based on an estimated 2014 overharvest of 1.3 mt dw (2,638 lb dw) and a previously unaccounted for 2013 overharvest of 0.1 mt dw (408 lb dw). However, based on the updated landings data, NMFS found that the 2014 quota was overharvested by 2.3 mt dw (5,095 lb dw), and NMFS also determined that the 2013 landings were overestimated by 1.3 mt dw (2,758 lb dw). Thus, NMFS will reduce the 2015 base annual quota by 1.0 mt dw (2,337 lb dw), based on the most recent estimates of the 2013 and 2014 landings. Therefore, the 2015 adjusted annual quota for Gulf of Mexico aggregated LCS is 156.5 mt dw (344,980 lb dw) (157.5 mt dw annual base quota – 2.3 mt dw 2014 overharvest + 1.3 mt dw 2013 overestimated landings = 156.5 mt dw 2015 adjusted annual quota). As described above, landings information beyond October 15, 2014, was not available while NMFS was writing this rule. This final rule used the most recent available information to allow NMFS to properly analyze the fishery and open the fishery on January 1, 2015. Any landings between October 15 and December 31, 2014, will be accounted for in the 2016 shark fisheries quotas, as appropriate.

3. NMFS changed the opening date for the aggregated LCS and hammerhead shark management groups in the Atlantic region from June 1, 2015, to July 1, 2015. As explained above, NMFS changed the opening date after considering the “Opening Fishing Season” criteria

(§ 635.27(b)(3)), public comment, and the 2014 landings data in order to promote more equitable fishing opportunities in the Atlantic region.

2015 Annual Quotas

This final rule adjusts the 2015 commercial quotas due to over- and/or underharvests in 2014 and previous fishing seasons, based on landings data through October 15, 2014. The 2015 annual quotas by species and species group are summarized in Table 1. All dealer reports that are received by NMFS after October 15, 2014, will be used to adjust the 2016 quotas, if necessary. A description of the quota calculations is provided in the proposed rule and is not repeated here. Any changes are described in the “Changes from the Proposed Rule” section.

Table 1. 2015 Annual Quotas and Opening Dates for the Atlantic Shark Fisheries. (All quotas and landings are dressed weight (dw), in metric tons (mt), unless specified otherwise.)

Region	Management Group	2014 Annual Quota (A)	Preliminary 2014 Landings ¹ (B)	Adjustments (C)	2015 Base Annual Quota (D)	2015 Final Annual Quota (D+C)	Season Opening Dates
Gulf of Mexico	Blacktip Sharks	274.3 mt dw (604,626 lb dw)	202.3 mt dw (446,024 lb dw)	72.0 mt dw (158,602 lb dw) ²	256.6 mt dw (565,700 lb dw)	328.6 mt dw (724,302 lb dw)	January 1, 2015
	Aggregated Large Coastal Sharks	151.2 mt dw (333,828 lb dw)	153.7 mt dw (338,923 lb dw)	- 1.0 mt dw (2,337 lb dw) ³	157.5 mt dw (347,317 lb dw)	156.5 mt dw (344,980 lb dw)	
	Hammerhead Sharks	25.3 mt dw (55,722 lb dw)	14.4 mt dw (31,733 lb dw)	-	25.3 mt dw (55,722 lb dw)	25.3 mt dw (55,722 lb dw)	
	Non-Blacknose Small Coastal Sharks	68.3 mt dw (150,476 lb dw)	66.8 mt dw (147,366 lb dw)	-	45.5 mt dw (100,317 lb dw)	45.5mt dw (100,317 lb dw)	
	Blacknose Sharks	1.8 mt dw (4,076 lb dw)	1.4 mt dw (3,149 lb dw)	-0.2 mt dw (-437 lb dw) ⁴	2.0 mt dw (4,513 lb dw)	1.8 mt dw (4,076 lb dw)	
Atlantic	Aggregated Large Coastal Sharks	168.9 mt dw (372,552 lb dw)	101.6 mt dw (224,098 lb dw)	-	168.9 mt dw (372,552 lb dw)	168.9 mt dw (372,552 lb dw)	July 1, 2015
	Hammerhead Sharks	27.1 mt dw (59,736 lb dw)	6.0 mt dw (13,223 lb dw)	-	27.1 mt dw (59,736 lb dw)	27.1 mt dw (59,736 lb dw)	
	Non-Blacknose Small Coastal Sharks	264.1 mt dw (582,333 lb dw)	103.1 mt dw (227,202 lb dw)	-	176.1 mt dw (388,222 lb dw)	176.1 mt dw (388,222 lb dw)	January 1, 2015
	Blacknose Sharks	17.5 mt dw (38,638 lb dw)	17.4 mt dw (38,437 lb dw)	-0.5 mt dw (-1,111 lb dw) ⁴	18.0 mt dw (39,749 lb dw)	17.5 mt dw (38,638 lb dw)	

No regional quotas	Non-Sandbar LCS Research	50.0 mt dw (110,230 lb dw)	14.3 mt dw (31,543 lb dw)	-	50.0 mt dw (110,230 lb dw)	50.0 mt dw (110,230 lb dw)	January 1, 2015
	Sandbar Shark Research	116.6 mt dw (257,056 lb dw)	37.5 mt dw (82,737 lb dw)	-	116.6 mt dw (257,056 lb dw)	116.6 mt dw (257,056 lb dw)	
	Blue Sharks	273.0 mt dw (601,856 lb dw)	7.8 mt dw (17,157 lb dw)	-	273.0 mt dw (601,856 lb dw)	273.0 mt dw (601,856 lb dw)	
	Porbeagle Sharks	1.3 mt dw (2,874 lb dw)	0.5 mt dw (1,035 lb dw)	-	1.7 mt dw (3,748 lb dw)	1.7 mt dw (3,748 lb dw)	
	Pelagic Sharks Other Than Porbeagle or Blue	488 mt dw (1,075,856 lb dw)	126.7 mt dw (279,276 lb dw)	-	488.0 mt dw (1,075,856 lb dw)	488.0 mt dw (1,075,856 lb dw)	

¹ Landings are from January 1, 2014, through October 15, 2014, and are subject to change.

² This adjustment accounts for underharvest in 2014. Therefore, the Gulf of Mexico blacktip shark adjusted quota will be 328.6 mt dw for the 2015 fishing season.

³ This adjustment accounts for overharvests from 2013 and 2014. In the final rule establishing the 2014 quotas (78 FR 70500; November 26, 2013), the 2013 Gulf of Mexico aggregated LCS quota was overharvested by 6.2 mt dw (13,489 lb dw). After the final rule establishing the 2014 quotas published, late dealer reports indicated the quota was overharvested by an additional 0.1 mt dw (408 lb dw), for a total overharvest of 6.3 mt dw (13,897 lb dw). Recently, NMFS determined that the 2014 final rule overestimated the overharvest from 2013 by 1.3 mt dw (2,758 lb dw). In 2014, the Gulf of Mexico aggregated LCS quota was overharvested by 2.3 mt dw (5,095 lb dw). Therefore, this final rule reduces the Gulf of Mexico aggregated LCS quota by 1.0 mt dw (2.3 mt dw overharvest in 2014 – 1.3 mt dw overestimated from 2013). NMFS will adjust the 2015 base annual quota based on the updated overharvest estimates from 2013 and 2014.

⁴ This adjustment accounts for overharvest in 2012. After the final rule establishing the 2012 quotas published, late dealer reports indicated the blacknose shark quota was overharvested by 3.5 mt dw (7,742 lb dw). In the final rule establishing the 2014 quotas, NMFS implemented a 5-year adjustment of the overharvest amount by the percentage of landings in 2012. Thus, NMFS will reduce the Gulf of Mexico blacknose shark quota by 0.2 mt dw (437 lb dw) and the Atlantic blacknose shark quota by 0.5 mt dw (1,111 lb dw) each year from 2014 through 2018. NMFS will reduce the 2015 base annual quota based on overharvest from 2012.

Fishing Season Notification for the 2015 Atlantic Commercial Shark Fishing Seasons

Based on the seven “Opening Fishing Season” criteria listed in § 635.27(b)(3), the 2015 Atlantic commercial shark fishing seasons for the Gulf of Mexico blacktip shark, Gulf of Mexico aggregated LCS, Gulf of Mexico hammerhead shark, non-blacknose shark SCS, blacknose shark, sandbar shark, blue shark, porbeagle shark, and pelagic shark (other than porbeagle or blue sharks) management groups in the northwestern Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, will open on January 1, 2015. The aggregated LCS and hammerhead shark management groups in the Atlantic region will open on July 1, 2015.

All of the shark management groups would remain open until December 31, 2015, or until NMFS determines that the fishing season landings for any shark management group has reached, or is projected to reach, 80 percent of the available quota. Additionally, NMFS has established non-linked and linked quotas; linked quotas are explicitly designed to concurrently close multiple shark management groups that are caught together to prevent incidental catch mortality from exceeding the total allowable catch. At this time, Gulf of Mexico blacktip and pelagic sharks have non-linked quotas and can close without affecting any other management groups. Consistent with § 635.28(b)(4), NMFS may close the Gulf of Mexico blacktip shark management group before landings reach, or are expected to reach, 80 percent of the quota. The linked quotas of the species and/or management groups are Atlantic hammerhead sharks and Atlantic aggregated LCS; Gulf of Mexico hammerhead sharks and Gulf of Mexico aggregated LCS; Atlantic blacknose and Atlantic non-blacknose SCS; and Gulf of Mexico blacknose and Gulf of Mexico non-blacknose SCS. NMFS will file for publication with the Office of the Federal Register a notice of closure for that shark species, shark management group including

any linked quotas, and/or region that will be effective no fewer than 5 days from date of filing. From the effective date and time of the closure until NMFS announces, via the publication of a notice in the Federal Register, that additional quota is available and the season is reopened, the fisheries for the shark species or management group are closed, even across fishing years. Before taking any inseason action, NMFS would consider the criteria listed at § 635.28(b)(4).

Classification

The NMFS Assistant Administrator has determined that the final rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the MSA, and other applicable law.

This final rule is exempt from review under Executive Order 12866.

In compliance with section 604 of the Regulatory Flexibility Act (RFA), NMFS prepared a Final Regulatory Flexibility Analysis (FRFA) for this final rule, which analyzed the adjustments to the Gulf of Mexico blacktip shark, Gulf of Mexico aggregated LCS, and blacknose shark management group quotas based on over- and/or underharvests from the previous fishing season(s). The FRFA analyzes the anticipated economic impacts of the final actions and any significant economic impacts on small entities. The FRFA is below.

Section 604(a)(1) of the Regulatory Flexibility Act requires an explanation of the purpose of the rulemaking. The purpose of this final rulemaking is, consistent with the Magnuson-Stevens Act, to adjust the 2015 annual quotas for all Atlantic and Gulf of Mexico shark management groups based on over- and/or underharvests from the previous fishing year(s), where allowable. These adjustments are being implemented according to the regulations implemented for the 2006 Consolidated HMS FMP and its amendments.

In this rulemaking, NMFS expects few, if any, economic impacts to fishermen other than those already analyzed in the 2006 Consolidated HMS FMP and its amendments. While there may be some direct negative economic impacts associated with the opening dates for fishermen in certain areas, there could also be positive effects for other fishermen in the region. The opening dates were chosen to allow for an equitable distribution of the available quotas among all fishermen across regions and states, to the extent practicable.

Section 604(a)(2) of the Regulatory Flexibility Act requires NMFS to summarize significant issues raised by the public in response to the Initial Regulatory Flexibility Analysis (IRFA), provide a summary of NMFS' assessment of such issues, and provide a statement of any changes made as a result of the comments. The IRFA was done as part of the proposed rule for the 2014 Atlantic Commercial Shark Season Specifications. NMFS did not receive any comments specific to the IRFA. However, NMFS received comments related to the overall economic impacts of the proposed rule, and those comments and NMFS' assessment of and response to them are summarized above (see Comments 1, 2, 3, 4, and 10 above). As described in the responses to those comments relating to the season opening dates, consistent with § 635.27(b)(3), the opening date for the Gulf of Mexico blacktip shark, Gulf of Mexico aggregated LCS, Gulf of Mexico hammerhead shark, non-blacknose shark SCS, blacknose shark, sandbar shark, blue shark, porbeagle shark, and pelagic shark (other than porbeagle or blue sharks) management groups will be implemented as proposed, while the opening date for the aggregated LCS and hammerhead shark management groups in the Atlantic region will be delayed until July 1, 2015.

Section 604(a)(3) requires NMFS to provide an estimate of the number of small entities

to which the rule would apply. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the United States, including fish harvesters. On June 12, 2014, the SBA issued an interim final rule revising the small business size standards for several industries effective July 14, 2014 (79 FR 33467; June 12, 2014). The rule increased the size standard from \$19.0 to \$20.5 million for finfish fishing, from \$5 to \$5.5 million for shellfish fishing, and from \$7.0 million to \$7.5 million for other marine fishing, for-hire businesses, and marinas. *Id.* at 33656, 33660, 33666. NMFS has reviewed the analyses prepared for this action in light of the new size standards. Under the former, lower size standards, all entities subject to this action were considered small entities, thus they all would continue to be considered small under the new standards. NMFS does not believe that the new size standards affect analyses prepared for this action. The final rule would apply to the approximately 206 directed commercial shark permit holders (127 in the Atlantic and 79 in the Gulf of Mexico regions), 258 incidental commercial shark permit holders (158 in the Atlantic and 100 in the Gulf of Mexico regions), and 96 commercial shark dealers (68 in the Atlantic and 28 in the Gulf of Mexico regions) as of October 2014.

Section 604(a)(4) of the Regulatory Flexibility Act requires NMFS to describe the projected reporting, recordkeeping, and other compliance requirements of the final rule, including an estimate of the classes of small entities which would be subject to the requirements of the report or record. None of the actions in this final rule would result in additional reporting, recordkeeping, or compliance requirements beyond those already analyzed in Amendments 2, 3, and 5a to the 2006 Consolidated HMS FMP.

Section 604(a)(5) of the Regulatory Flexibility Act requires NMFS to describe the steps

taken to minimize the economic impact on small entities, consistent with the stated objectives of applicable statutes. Additionally, the Regulatory Flexibility Act (5 U.S.C. 603(c)(1)-(4)) lists four general categories of “significant” alternatives that would assist an agency in the development of significant alternatives that would accomplish the stated objectives of applicable statutes and minimize any significant economic impact of the rule on small entities. These categories of alternatives are: 1) establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; 2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; 3) use of performance rather than design standards; and 4) exemptions from coverage of the rule, or any part thereof, for small entities.

In order to meet the objectives of this rule, consistent with the Magnuson-Stevens Act, NMFS cannot exempt small entities or change the reporting requirements only for small entities. This rulemaking does not establish management measures to be implemented, but rather implements previously adopted and analyzed measures as adjustments, as specified in Amendments 2, 3, and 5a to the 2006 Consolidated HMS FMP and the EA for the 2011 shark quota specifications rule. Thus, in this rulemaking, NMFS adjusted the base quotas established and analyzed in Amendments 2, 3, and 5a to the 2006 Consolidated HMS FMP by subtracting the underharvest or adding the overharvest, as specified and allowable in existing regulations. Under current regulations (§ 635.27(b)(2)), all shark fisheries close on December 31 of each year, or when NMFS determines that the fishing season landings for any shark management group has reached, or is projected to reach, 80 percent of the available quota, and do not open until NMFS takes action, such as this rulemaking to re-open the fisheries. Thus, not

implementing these management measures would negatively affect shark fishermen and related small entities, such as dealers, and also would not provide management the flexibility in furtherance of equitable fishing opportunities, to the extent practicable, for commercial shark fishermen in all regions and areas.

Based on the 2013 ex-vessel price, fully harvesting the unadjusted 2015 Atlantic shark commercial baseline quotas could result in total fleet revenues of \$4,671,260 (see Table 2). For the Gulf of Mexico blacktip shark management group, there would be a \$94,606 gain in revenue to the regional fleet due to the adjustment for underharvest in 2014. The adjustment for the Gulf of Mexico aggregated LCS management group due to the overharvest in 2014 and the revised overharvest in 2013 would result in a \$1,558 loss in revenue to the regional fleet. The adjustment for the blacknose shark management group due to the overharvest in 2012, which resulted in a 5-year quota reduction, would result in a \$431 loss to the Gulf of Mexico blacknose shark management group and a \$1,542 loss to the Atlantic blacknose shark management group.

Table 2. Average ex-Vessel Prices per lb dw for Each Shark Management Group, 2013*.

Year	Species	Region	Price
2013	Aggregated LCS	Gulf of Mexico	\$0.49
		Atlantic	\$0.81
	Blacktip Shark	Gulf of Mexico	\$0.42
	Hammerhead Shark	Gulf of Mexico	\$0.41
		Atlantic	\$0.64
	LCS Research	Both	\$0.72
	Sandbar Research	Both	\$0.78
	Non-Blacknose SCS	Gulf of Mexico	\$0.32
		Atlantic	\$0.70
	Blacknose Shark	Gulf of Mexico	\$0.81
		Atlantic	\$0.83
	Blue shark	Both	\$0.28
	Porbeagle shark	Both	\$1.15**
	Other Pelagic sharks	Both	\$1.69
	Shark Fins	Gulf of Mexico	\$11.16
		Atlantic	\$3.53

Both \$6.05

*The ex-vessel prices are based on 2013 dealer reports through December 31, 2013.

**Since the porbeagle shark management group was closed for 2013, there was no 2013 price data. Thus, NMFS used price data from 2012.

All of these changes in gross revenues are similar to the changes in gross revenues analyzed in the 2006 Consolidated HMS FMP and its amendments. The FRFAs for those amendments concluded that the economic impacts on these small entities, resulting from rules such as this one that establish the season openings via proposed and final rulemaking, were expected to be minimal. The 2006 Consolidated HMS FMP and its amendments, and the EA for the 2011 shark quota specifications rule, assumed NMFS would be preparing annual rulemakings and considering the previous FRFAs in the economic and other analyses at the time of the annual rulemakings.

For this final rule, NMFS reviewed the “Opening Fishing Season” criteria at § 635.27(b)(3)(i) through (b)(3)(vii) to determine when opening each fishery will provide equitable opportunities for fishermen while also considering the ecological needs of the different species. Over- and/or underharvests of 2014 and previous fishing season quotas were examined for the different species/complexes to determine the effects of the 2015 final quotas on fishermen across regional fishing areas. The potential season lengths and previous catch rates were examined to ensure that equitable fishing opportunities would be provided to fishermen. Lastly, NMFS examined the seasonal variation of the different species/complexes and the effects on fishing opportunities. In addition to these criteria, NMFS also considered other relevant factors, such as recent landings data and public comments, before arriving at the final opening dates for the 2015 Atlantic shark management groups. For the 2015 fishing season, NMFS is opening the fisheries

for Gulf of Mexico blacktip shark, Gulf of Mexico aggregated LCS, Gulf of Mexico hammerhead shark, non-blacknose shark SCS, blacknose shark, sandbar shark, blue shark, porbeagle shark, and pelagic shark (other than porbeagle or blue sharks) management groups on January 1, 2015. The direct and indirect economic impacts will be neutral on a short- and long-term basis, because NMFS did not change the opening dates of these fisheries from the status quo.

NMFS is delaying the opening of the aggregated LCS and hammerhead shark management groups in the Atlantic region until July 1, 2014. This delay could result in short-term, direct, minor, adverse economic impacts, as fishermen and dealers in the southern portion of the Atlantic region would not be able to fish for aggregated LCS and hammerhead sharks starting in January, but would still be able to fish earlier in the 2015 fishing season compared to the 2010 through 2012 fishing seasons, which did not start until July 15. Based on public comment, some Atlantic fishermen in the southern portion of the region preferred a delayed opening for the potential to be fishing for aggregated LCS and hammerhead sharks from October through December. Therefore, the delayed opening could have direct, minor, beneficial economic impacts for fishermen, since there are limited opportunities for fishermen to fish for non-HMS in the southern portion of the Atlantic region later in the year. In the northern portion of the Atlantic region, a delayed opening for the aggregated LCS and hammerhead shark management groups would have direct, minor, beneficial economic impacts in the short-term for fishermen as they would have access to the aggregated LCS and hammerhead shark quotas in 2015. Overall, delaying the opening until July 1 would cause beneficial cumulative economic impacts across the region, since it would allow for a more equitable distribution of the quotas

among constituents in this region. In addition, delaying the opening until July 1 would have minor, beneficial ecological impacts in the short term for the Atlantic aggregated LCS and hammerhead management groups, since it is consistent with recommendations from the stock assessments. The economic impacts would be neutral on long-term basis, because this delayed opening would be for only the 2015 fishing season.

Authority: 16 U.S.C. 971 et seq.; 16 U.S.C. 1801 et seq.

Dated: November 19, 2014

Samuel D. Rauch III,
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National Marine Fisheries Service.

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